

Applicant : Ying Wen Hsu
Appl. No. : 09/998,867
Examiner : Brian Healy
Docket No. : 703427.5 (formerly 263/288)

Remarks/Arguments

Claims 1-73 are pending in this application. Claims 1, 16, 23, 52, 61 and 63 have been amended in this Amendment.

I. Claims That Are Allowable If Rewritten Into Independent Form

The Examiner objected to claims 52-63 as being dependent upon a rejected base claim, but stated that these claims would be allowable if rewritten into independent form. Accordingly, applicant has amended claims 52, 61 and 63 to be in independent form. The remaining claims 53-60 and 62 are dependent on independent claims 52, 61 or 63. Therefore, all claims 52-63 are no longer dependent on a rejected base claim and are in condition for allowance.

II. Rejections under 35 USC §102

Claims 1-6, 8, 9, 10, 12, 14-25, 28, 29, 31-34, 41-43, 45, 46, 66-69, 71 and 72 are rejected under 35 USC §102(b), as being anticipated by Harman (U.S. Patent 5,727,099). Claims 1-51 and 64073 are rejected under 35 USC §102(e), as being anticipated by Espindola et al (U.S. Patent 6,102,582).

Claims 1 and 16 have been amended to emphasize that the method of attenuating an optical signal uses "a movable platform formed by a semiconductor process" and "an actuator formed by a semiconductor process to move the movable platform." Likewise, claim 23, as amended, recites that the device is a semiconductor device that has a movable structure formed by a semiconductor process and an actuator also formed by a semiconductor process to move the movable structure.

Harman's device is essentially an instrument formed by an assembly consisting of optical fibers and manually operated mechanical elements, such as a threaded screw, bearing, and nut. Harman's device is not and cannot be formed by a semiconductor process because, for example, the screw, bearing and nut cannot be made by a semiconductor process. Harman's mechanical device also does not have a movable platform and an actuator that are both "formed by a semiconductor process" as required by the amended claims.

Applicant : Ying Wen Hsu
Appl. No. : 09/998,867
Examiner : Brian Healy
Docket No. : 703427.5 (formerly 263/288)

Similarly, Espindola describes an assembly of mechanical elements that cannot be fabricated by a semiconductor process, such as fiber, magnets, springs, and support structures. Espindola's mechanical device also does not have a movable platform and an actuator that are both "formed by a semiconductor process" as required by the amended claims.

Therefore, neither the Harman nor the Espindola reference disclose all of the elements of amended claims 1, 16 or 23. Consequently, independent claims 1, 16 and 23 are patentably distinguishable over the Harman and Espindola references. The pending dependent claims 2-15, 17-22, 24-51, 64-73 are patentable over these references for at least the same reasons their independent claims are patentable.

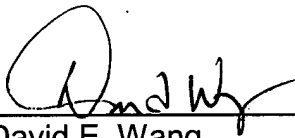
III. Conclusion

Prompt and favorable action on the merits of the claims is earnestly solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: March 29, 2004

By: 
David E. Wang
Reg. No. 38,358

Orrick, Herrington & Sutcliffe LLP
4 Park Plaza, Suite 1600
Irvine, CA 92614-2558
Tel. 949-567-6700
Fax: 949-567-6710